

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD E. FLOYD and DEPARTMENT OF THE NAVY,
CONSTRUCTION BATTALION CENTER, Gulfport, MS

*Docket No. 02-708; Submitted on the Record;
Issued July 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability on or after August 9, 1990.

The case has been before the Board on two prior appeals. By decision dated December 10, 1998, the Board set aside a June 4, 1996 decision of the Office of Workers' Compensation Programs. The Board found that the evidence was sufficient to establish that appellant had an accepted May 18, 1970 back injury, and therefore the Office should further develop the evidence.¹ In a decision dated January 26, 2001, the Board set aside a March 17, 1999 Office decision, finding that the Office had failed to further develop the medical evidence.² The history of the case is provided in the Board's prior decisions and is incorporated herein by reference.

By decision dated October 4, 2001, the Office denied appellant's claim for a recurrence of disability.

The Board finds that appellant has not established a recurrence of disability on or after August 9, 1990.

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

¹ Docket No. 97-36.

² Docket No. 00-1055.

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

On November 18, 1994 appellant filed a notice of recurrence of disability commencing August 9, 1990. On the claim form appellant discussed back pain, radiating into the left leg, indicating that he initially sustained a back injury in 1970 at work. With respect to the date August 9, 1990, the record indicates that on this date appellant sustained a new injury while in private employment. In order to establish entitlement to compensation on or after August 9, 1990, the medical evidence must establish causal relationship between an employment injury and a specific period of disability.

The Office referred the case for a second opinion to Dr. Raymond R. Fletcher, a Board-certified orthopedic surgeon. In a report dated April 5, 2001, Dr. Fletcher provided a history and results on examination. Dr. Fletcher noted that appellant had a May 18, 1970 lumbar sprain with left sciatica at work, as well as a May 13, 1977 work injury involving the right foot. He also noted that medical reports at the time of the August 9, 1990 private employment injury did not indicate continuing residuals of a 1970 back injury. Dr. Fletcher referred to a December 18, 1990 report that indicated that appellant had reported no back problems prior to August 9, 1990.⁴ Dr. Fletcher opined that, while appellant continued to have residuals of the private employment injury, the medical evidence indicated that the 1970 work injury had resolved as of August 5, 1990.

The Board finds that Dr. Fletcher's report represents the weight of the evidence in this case. He submitted a reasoned medical opinion based on an accurate background that appellant did not have an employment-related disability after August 9, 1990. The record does not contain a complete medical report supporting any employment-related disability as of August 9, 1990. In a report dated November 14, 1994, Dr. Joe Jackson, a neurologist, stated that appellant had chronic low back pain related to a 1970 employment injury. Dr. Jackson does not provide a complete history of injury, does not discuss the August 9, 1990 injury, the relevant medical evidence or otherwise clearly explain why he attributed appellant's condition to a 1970 work injury.

Accordingly, the Board finds that appellant did not meet his burden of proof in establishing a recurrence of disability in this case.

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ In the December 18, 1990 report, Dr. Arthur Auerbach, a Board-certified orthopedic surgeon, indicated that appellant reported no injuries or problems with his back prior to August 9, 1990. Dr. Auerbach diagnosed long-standing mild degenerative disc disease at L4-5 and L5-S1, some disc bulging at L4-5, left herniated disc at L5-S1, and early facet hypertrophy at L5-S1.

The decision of the Office of Workers' Compensation Programs dated October 4, 2001 is affirmed.

Dated, Washington, DC
July 25, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member